

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

CASE NO.: 11594 RCL
Honorable Reginald C. Lindsay

GERALDINE FAVALORO, for herself and on)
behalf of all others similarly situated,)
Plaintiff,)
)
vs.)
)
PRESIDENT AND FELLOWS OF HARVARD)
COLLEGE, BAYVIEW CREMATORY, LLC,)
a New Hampshire Limited Liability Company,)
LINDA STOKES, TRUSTEE OF THE DEKES)
REALTY TRUST OF 107 SOUTH)
BROADWAY, LAWRENCE,)
MASSACHUSETTS, and JOHN J. GENTILE,)
Defendants)

JOHN J. GENTILE'S PROPOSED FINDINGS FOR ENTRY OF
SEPARATE AND FINAL JUDGMENT

Defendant, John J. Gentile, respectfully requests that this Honorable Court makes the following findings:

1. Defendant, John J. Gentile, incorporates by reference, and does not oppose, the proposed Findings set forth in Plaintiff's Proposed Findings at Paragraph 6, sub-parts a, b, c, d, and g.
2. Defendant, John J. Gentile, disputes, rejects and opposes the proposed findings set forth in plaintiff's proposed findings at Paragraph 6, sub-parts e and f, as sub-parts 6(e) and 6(f) do not accurately reflect the Court's findings allowing the motions to dismiss of Harvard and Mr. Gentile.
3. Defendant, John J. Gentile, proposes substituting the following findings for plaintiff's proposed 6(e) and 6(f):

A. On December 19, 2005, the Court, (Lindsay, J.) after a lengthy hearing, with the benefit of written briefs, motions and oppositions, and upon oral argument by all counsel, determined that the plaintiff's complaint failed to allege that Harvard or Mr. Gentile acted with an absence of good faith;

B. On December 19, 2005, the Court, (Lindsay, J.) acting within its discretion to deny futile amendments, denied plaintiff's counsel's request, at the end of the hearing, to amend the complaint to allege Harvard and Mr. Gentile acted with an absence of good faith, given that plaintiff's counsel, Attorney David Charlip, could not identify any existing evidentiary support for such an allegation, nor represent to the Court, consistent with Fed.R. Civ. P. 11, any reasonable likelihood that evidentiary support for such an allegation would be identified, prospectively, through discovery.

Respectfully Submitted

/s/ Douglas A. Robertson
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May 15, 2006
Dated